

SECOND REGULAR SESSION

SENATE BILL NO. 746

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATORS DOUGHERTY, WHEELER, BLAND, BRAY, COLEMAN AND DAYS.

Pre-filed December 1, 2003, and ordered printed.

TERRY L. SPIELER, Secretary.

2913S.06I

AN ACT

To repeal sections 701.304, 701.308, 701.311, 701.336, and 701.342, RSMo, and to enact in lieu thereof five new sections relating to lead poisoning.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 701.304, 701.308, 701.311, 701.336, and 701.342, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 701.304, 701.308, 701.311, 701.336, and 701.342, to read as follows:

701.304. 1. A representative of the department, or a representative of a unit of local government or health department licensed by the department for this purpose, may conduct an inspection or a risk assessment at a dwelling or a child-occupied facility for the purpose of ascertaining the existence of a lead hazard under the following conditions:

(1) The department, owner of the dwelling, and an adult occupant of a dwelling which is rented or leased have been notified that an occupant of the dwelling or a child six or fewer years of age who regularly visits the child-occupied facility has been identified as having an elevated blood lead level as defined by rule; and

(2) The inspection or risk assessment occurs at a reasonable time; and

(3) The representative of the department or local government presents appropriate credentials to the owner or occupant; and

(4) Either the dwelling's owner or adult occupant or the child-occupied facility's owner or agent grants consent to enter the premises to conduct an inspection or risk assessment; or

(5) If consent to enter is not granted, the representative of the department, local government, or local health department may petition the circuit court for an order to enter the premises and conduct an inspection or risk assessment after notifying the dwelling's owner or adult occupant in writing of the time and purpose of the inspection or risk

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

assessment at least forty-eight hours in advance. The court shall grant the order upon a showing that an occupant of the dwelling or a child six or fewer years of age who regularly visits the child-occupied facility has been identified as having an elevated blood lead level as defined by rule.

2. In conducting such an inspection or risk assessment, a representative of the department, or representative of a unit of local government or health department licensed by the department for this purpose, may remove samples necessary for laboratory analysis in the determination of the presence of a lead-bearing substance or lead hazard in the designated dwelling or child-occupied facility.

3. The director shall assess fees for licenses and accreditation **and levy fines** in accordance with rules promulgated pursuant to sections 701.300 to [701.330] **701.338**. All such fees **and fines** shall be deposited into the state treasury to the credit of the public health services fund established in section 192.900, RSMo.

701.308. 1. Upon receipt of written notification of the presence of a lead hazard, the owner shall comply with the requirement for abating or establishing interim controls for the lead hazard in a manner consistent with the recommendations described by the department and within the applicable time period. If the dwelling or child-occupied facility is a rental or leased property, the owner may remove it from the rental market.

2. Except as provided in subsection 1 of this section, no tenant shall be evicted because an individual with an elevated blood lead level or with suspected lead poisoning resides in the dwelling, or because of any action required of the dwelling owner as a result of enforcement of sections 701.300 to 701.338. The provisions of this subsection shall not operate to prevent the owner of any such dwelling from evicting a tenant for any other reason as provided by law.

3. No child shall be denied attendance at a child-occupied facility because of an elevated blood lead level or suspected lead poisoning or because of any action required of the facility owner as a result of enforcement of sections 701.300 to 701.338. The provisions of this subsection shall not prevent the owner or agent of any such child-occupied facility from denying attendance for any other reason allowed by law.

4. **A representative of the department, or a representative of a unit of local government or health department licensed by the department for this purpose, is authorized to re-enter a dwelling or child-occupied facility to determine if the required actions have been taken that will result in the reduction of lead hazard. If consent to enter is not granted, the representative of the department, local government, or local health department may petition the court for an order to enter the premises. The court shall grant the order upon a showing that the representative of the department, local government, or local health department has attempted to notify the dwelling's owner or adult occupant in writing of the time**

and purpose of the re-entry at least forty-eight hours in advance.

5. [Whenever] **Upon re-entry, if the department[,]** or a representative of a unit of local government[,]

or local health department licensed by the department for this purpose, finds[, after providing written notification to the owner,] that **the owner has not taken the** required actions which [will result] **have resulted** in the reduction of [a] lead [hazard in a dwelling or child-occupied facility have not been taken] **hazards**, the owner shall be deemed to be in violation of sections 701.300 to 701.338. Such violation shall not by itself create a cause of action. The department or the local government or local health department shall:

(1) Notify in writing the owner found to be causing, allowing or permitting the violation to take place; and

(2) Order that the owner of the dwelling or child-occupied facility shall cease and abate causing, allowing or permitting the violation and shall take such action as is necessary to comply with this section and the rules promulgated pursuant to this section.

[5.] 6. If [no action is taken pursuant to subsection 4 of this section which would result in abatement or interim control of the lead hazard within the stated time period], **upon re-entry, the lead hazard has not been reduced**, the following steps may be taken:

(1) The local health officer and local building officials may, as practical, use such community or other resources as are available to effect the relocation of the individuals who occupied the affected dwelling or child-occupied facility until the owner complies with the notice; or

(2) The department[,]

or representative of a unit of local government or health department licensed by the department for this purpose, [shall] **may** report any violation of sections 701.300 to 701.338 to the prosecuting attorney of the county in which the dwelling or child-occupied facility is located and notify the owner that such a report has been made. The prosecuting attorney shall seek injunctive relief to ensure that the lead hazard is abated or that interim controls are established.

7. **In addition to the injunctive relief provided in subdivision 2 of subsection 6 of this section, the court may impose a fine against the owner of the dwelling or child-occupied facility found to be in violation of any provision of sections 701.300 to 701.338, RSMo. The amount of such fine shall reflect the seriousness or potential seriousness of the threat to human health and the environment posed by the violation, but shall not exceed ten thousand dollars. The fine shall not be less than five thousand dollars if said owner has failed to reduce identified lead hazards upon a showing that:**

(1) **Said property owner has been notified that an occupant or child less than six years of age dwelling in his property has an elevated blood lead level pursuant to section 701.306;**

(2) That re-entry by the department under subsection 5 of this section revealed that the required actions to reduce the lead hazards were not taken; and

(3) Another occupant or child less than six years of age dwelling in his property is identified with an elevated blood lead level.

701.311. 1. Any authorized representative of the department who presents appropriate credentials may, at all reasonable times, enter public or private property to conduct compliance inspections of lead abatement contractors as may be necessary to implement the provisions of sections 701.300 to 701.338 and any rules promulgated pursuant to sections 701.300 to 701.338.

2. It is unlawful for any person to refuse entry or access requested for inspecting or determining compliance with sections 701.300 to 701.338. A suitably restricted search warrant, upon a showing of probable cause in writing and upon oath, shall be issued by any circuit or associate circuit judge having jurisdiction for the purpose of enabling such inspections.

3. Whenever the director determines through a compliance inspection that there are reasonable grounds to believe that there has been a violation of any provision of sections 701.300 to 701.338 or the rules promulgated pursuant to sections 701.300 to 701.338, the director shall give notice of such alleged violation to the owner or person responsible, as provided in this section. The notice shall:

(1) Be in writing;

(2) Include a statement of the reasons for the issuance of the notice;

(3) Allow reasonable time as determined by the director for the performance of any act the notice requires;

(4) Be served upon the property owner or person responsible as the case may require, provided that such notice shall be deemed to have been properly served upon such person when a copy of such notice has been sent by registered or certified mail to the person's last known address as listed in the local property tax records concerning such property, or when such person has been served with such notice by any other method authorized by law;

(5) Contain an outline of corrective action which is required to effect compliance with sections 701.300 to 701.338 and the rules promulgated pursuant to sections 701.300 to 701.338.

4. In the event the department is required to revisit an abatement project, either because a contractor is not present for the notification visit referenced in section 701.309, RSMo, or because the contractor is found in violation of a provision of sections 701.300 to 701.338, RSMo, or any regulation promulgated thereunder, the lead abatement contractor shall pay a fee of one hundred and fifty dollars per re-visit.

5. If an owner or person files a written request for a hearing within ten days of the

date of receipt of a notice, a hearing shall be held within thirty days from the date of receipt of the notice before the director or the director's designee to review the appropriateness of the corrective action. The director shall issue a written decision within thirty days of the date of the hearing. Any final decision of the director may be appealed to the administrative hearing commission as provided in chapter 621, RSMo. Any decision of the administrative hearing commission may be appealed as provided in sections 536.100 to 536.140, RSMo.

[5.] 6. The attorney general or the prosecuting attorney of the county in which any violation of sections 701.300 to 701.338 or the rules promulgated pursuant to sections 701.300 to 701.338, occurred shall, at the request of the city, county or department, institute appropriate proceedings for correction.

[6.] 7. When the department determines that an emergency exists which requires immediate action to protect the health and welfare of the public, the department is authorized to seek a temporary restraining order and injunction. Such action shall be brought at the request of the director by the local prosecuting attorney or the attorney general. For the purposes of this subsection, an "emergency" means any set of circumstances that constitutes an imminent health hazard or the threat of an imminent health hazard.

8. In addition to any other penalty provided by law, the department may assess a fine in a maximum amount not to exceed one thousand dollars for the first violation and five thousand dollars for each subsequent violation against any inspector, risk assessor, lead abatement worker, lead abatement supervisor, project designer, or contractor licensed by the department who violates a provision of sections 701.300 to 701.338, or any rule promulgated thereunder. In the cases of a continuing violation, every day such violation continues shall be deemed a separate violation.

701.336. 1. The department of health and senior services shall cooperate with the federal government in implementing subsections (d) and (e) of 15 U.S.C. 2685 to establish public education activities and an information clearinghouse regarding childhood lead poisoning. The department may develop additional educational materials on lead hazards to children, lead poisoning prevention, lead poisoning screening, lead abatement and disposal, and on health hazards during abatement.

2. The department of health and senior services and the department of social services, in collaboration with related not-for-profit organizations, health maintenance organizations, and the Missouri consolidated health care plan, shall devise an educational strategy to increase the number of children who are tested for lead poisoning under the Medicaid program. The goal of the educational strategy is to have seventy-five percent of the children who receive Medicaid tested for lead poisoning by August 28, 2008. The educational strategy shall be implemented over a three-year period and shall be in accordance with all federal

laws and regulations.

3. The division of family services, in collaboration with the department of health and senior services, shall regularly inform eligible clients of the availability and desirability of lead screening and treatment services, including those available through the early and periodic screening, diagnosis, and treatment (EPSDT) component of the Medicaid program.

4. The department of social services shall seek Medicaid waivers for the funding of lead prevention cleaning treatments and lead hazard reduction measures in the properties of Medicaid recipients. The department shall coordinate with the department of health and senior services to ensure that priority homes receive the appropriate funding and that risk assessments are conducted for the purpose of identifying lead hazards in properties.

701.342. 1. The department of health and senior services shall, using factors established by the department, including but not limited to the geographic index from data from testing reports, identify geographic areas in the state that are at high risk for lead poisoning. All children six months of age through six years of age who reside or spend more than ten hours a week in an area identified as high risk by the department shall be tested annually for lead poisoning.

2. Every child six months through six years of age not residing or spending more than ten hours a week in geographic areas identified as high risk by the department shall be assessed annually using a questionnaire to determine whether such child is at high risk for lead poisoning. The department, in collaboration with the department of social services, shall develop the questionnaire, which shall follow the recommendations of the federal Centers for Disease Control and Prevention. The department may modify the questionnaire to broaden the scope of the high-risk category. Local boards or commissions of health may add questions to the questionnaire.

3. Every child deemed to be at high risk for lead poisoning according to the questionnaire developed pursuant to subsection 2 of this section shall be tested using a blood sample.

4. Any child deemed to be at high risk for lead poisoning pursuant to this section who resides in housing currently undergoing renovations may be tested at least once every six months during the renovation and once after the completion of the renovation.

5. The department of social services, in collaboration with the department of health and senior services, shall ensure that all children six months through six years of age who are in foster care in geographic areas identified as high risk by the department are tested annually for lead poisoning. The costs of the testing shall be paid through the state Medicaid program. If a child who is in foster care and resides in a high risk area is not eligible for Medicaid, the costs of the testing shall be paid by the state.

6. Any laboratory providing test results for lead poisoning pursuant to sections 701.340 to 701.349 shall notify the department of the test results of any child tested for lead poisoning as required in section 701.326. Any child who tests positive for lead poisoning shall receive follow-up testing in accordance with rules established by the department. The department shall, by rule, establish the methods and intervals of follow-up testing and treatment for such children.

[6.] 7. When the department is notified of a case of lead poisoning, the department shall require the testing of all other children less than six years of age, and any other children or persons at risk, as determined by the director, who are residing or have recently resided in the household of the lead-poisoned child.

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